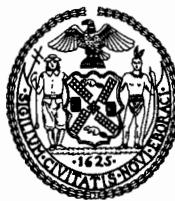


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MEMO ENDORSED

ZACHARY W. CARTER
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

CHERYL L. SHAMMAS
Senior Counsel
Phone: (212) 356-2406
Fax: (212) 788-9776
cshammas@law.nyc.gov

March 12, 2014

IT IS HEREBY ORDERED THAT the deadline for summary judgment motions regarding the five Plaintiffs named below is adjourned to May 30, 2014. Responses shall be due June 30, 2014 and replies shall be due July 14, 2014. No further extensions shall be given.

Via email (sullivannysdchambers@nysd.uscourts.gov)
The Honorable Richard J. Sullivan
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: RNC Consolidated cases

Your Honor:

RECORDED *3/13/14* *RECORDED*

As counsel for the defendants in connection with the above-referenced matters, we write to update the Court on the status of the RNC cases. In addition, for the reasons more fully discussed below, we respectfully request that the deadline to file summary judgment in the remaining five (5) RNC cases be adjourned *sine die* so as to conduct expert discovery and further pursue possible settlement. This is the parties' second request to adjourn the summary judgment deadline, which is currently set for March 31, 2014. Plaintiffs consent to this adjournment.

At the time of defendants' last update to the Court, there were eleven (11) plaintiffs whose cases were unresolved (excluding the 4 *Abdell* plaintiffs). Since that time, and after extensive negotiations, defendants have settled six (6) of those cases (Hacer Dinler; Kaitlyn Tikkun; Annette Karlin; Matthew Smith; Kathleen O'Reilly; and Joseph Carranza;), two with the assistance of Judge Francis. As such, five plaintiffs remain: Brian Conley and Yusuke Banno (attorney Jeffrey Fogel); Valarie Brar, Joshua Russell, and Kate Freitag (attorney Rose Weber).¹

¹ This excludes the 4 plaintiffs in *Abdell* who seek only a damages trial on their remaining claim of false arrest.

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With respect to Mr. Fogel's two plaintiffs, the parties have scheduled a settlement conference with Judge Francis for April 4, 2014.²

As to Ms. Weber's plaintiffs, the parties remain far apart in their case valuations. The reason for such disparate views is that plaintiffs allege permanent physical injury stemming from their 2004 arrests. The parties disagree about the cause and nature of these alleged injuries, which poses an obstacle to settlement. As such, in an effort to possibly bridge the settlement gap, Ms. Weber has agreed to provide defendants with updated medical records. In addition, the parties require that expert discovery take place so as to allow the parties to fully evaluate plaintiffs' alleged injuries and their causal links (and hence, make determinations regarding settlement).³ At a minimum, defendants require expert discovery to dismiss plaintiff Russell's conditions of confinement claim on summary judgment, which requires, among others, proof of significant and substantial injury.

As Your Honor may recall, Judge Francis, in an effort to streamline the RNC litigation – in which hundreds of plaintiffs claimed physical injury – had bifurcated medical expert discovery to take place after the filing of summary judgment motions. With almost every single RNC case now settled, the bifurcation proved useful. In view of the reasons set forth above, the parties are also writing to Judge Francis to request that an expert discovery schedule be set.

By the reason of the foregoing, defendants respectfully request that the Court adjourn the summary judgment deadline *sine die*.

Respectfully submitted,

/s_____
Cheryl L. Shammas
Senior Counsel

Cc.: The Honorable James C. Francis, IV (*via email*)
Rose Weber
Jeffrey Fogel

² The parties have selected a date in April because plaintiff Brian Conley is out of the country for the month of March with limited accessibility.

³ This would also be the case with plaintiff Conley, who similarly alleges physical injury.